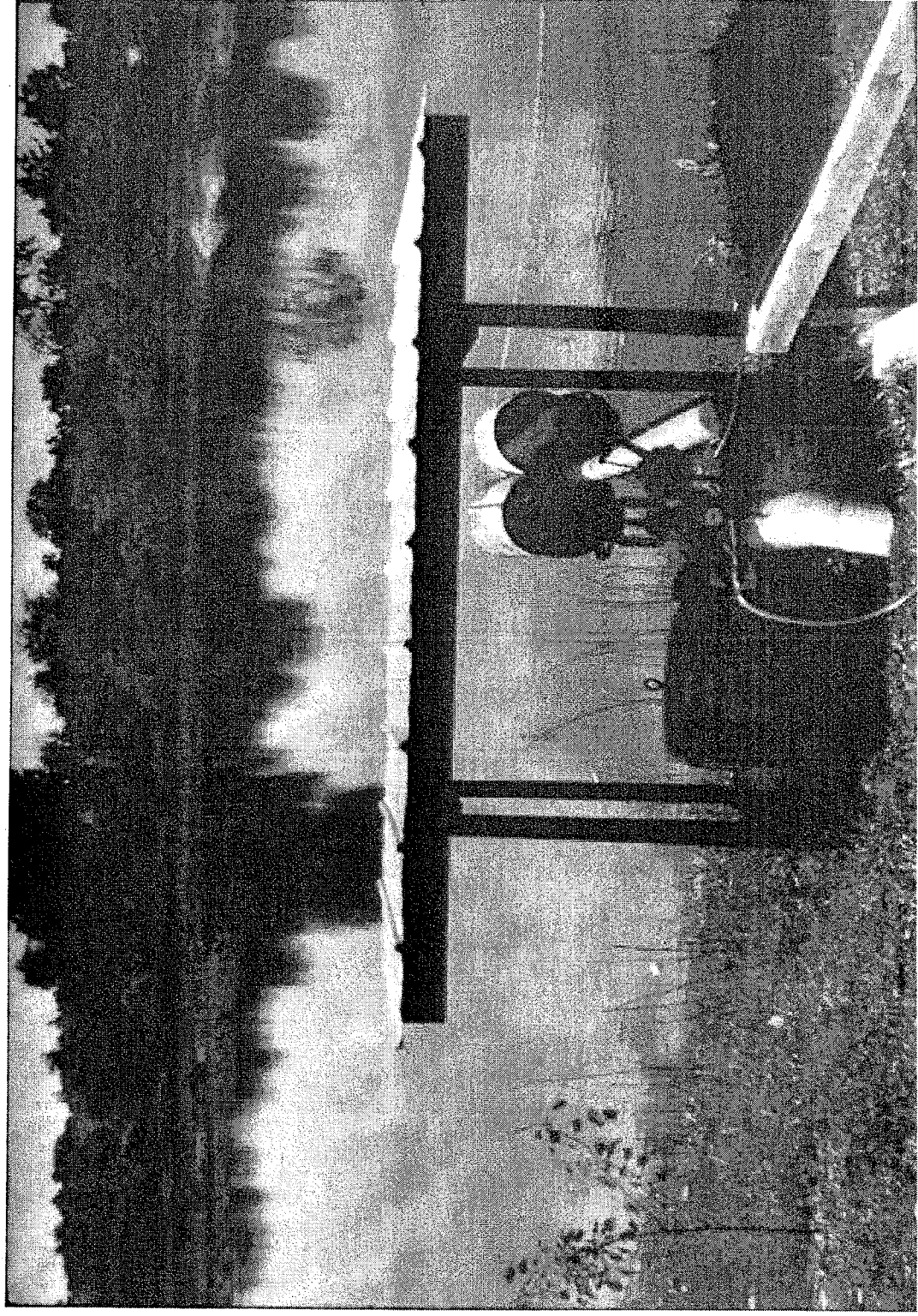


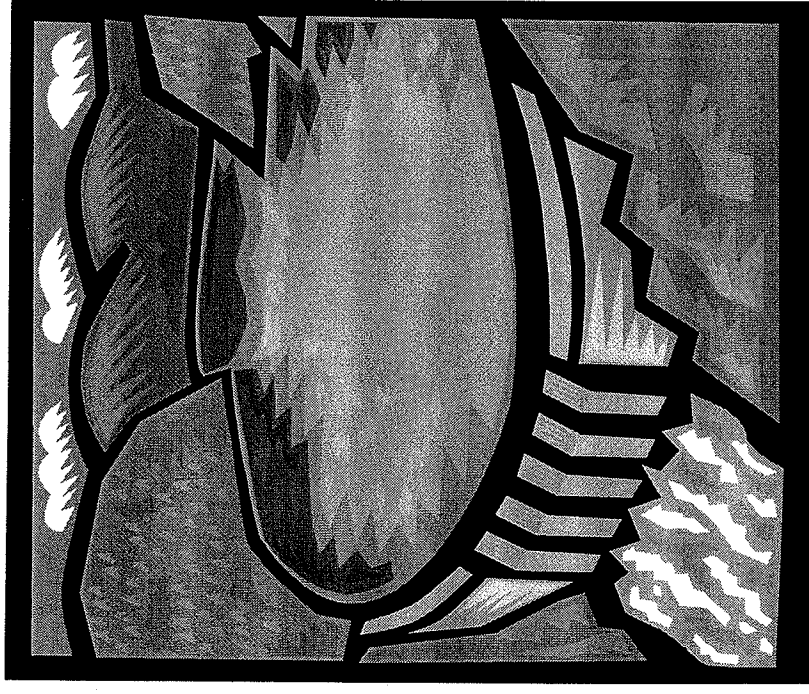
- Ind. Cod § 14-25-2
- 312 IAC 6.3
- Sale of Water from State-Owned Reservoirs (Power Point Presentation)

Sale of Water from State-Owned Reservoirs

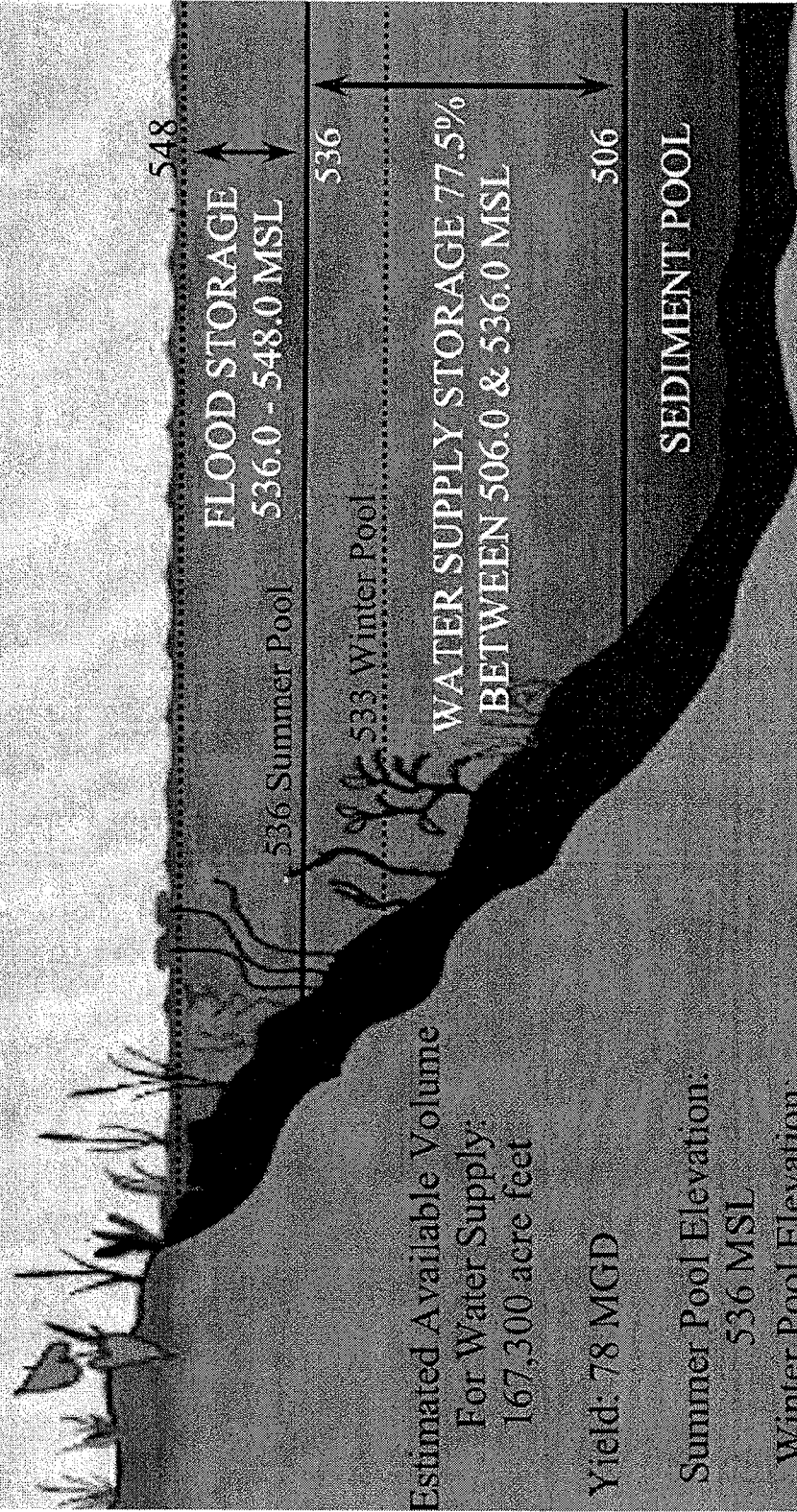


Water Supply Contracts

- The State of Indiana owns water supply storage capacity in reservoirs financed wholly or in part by the State.
- IC 14-25-2 allows the State to provide certain minimum quantities of stream flow or sell water on a unit-pricing basis for water supply purposes from this capacity at \$33/million gallons.
- The Division of Water currently administers such contracts on Brookville, Hardy, Monroe, and Patoka Lakes



Patoka Lake



Estimated Available Volume
For Water Supply:
167,300 acre feet

Yield: 78 MGD

Summer Pool Elevation:
536 MSL

Winter Pool Elevation:
533 MSL

Monroe Lake



Estimated Available Volume
For Water Supply:
160,000 acre feet
Simple Yield: 122 MGD

Summer Pool Elevation:

538 MSL

Winter Pool Elevation:

538 MSL

(no change per USACE)

556

FLOOD STORAGE

538 - 556 MSL

538

WATER SUPPLY STORAGE
BETWEEN 515.0 & 538.0 MSL

515

SEDIMENT POOL

The Written Request for Withdrawal

312 IAC 6.3-3-1

- Complete contact information for person entering the contract or for the person serving as point of contact
- Location of Withdrawal or Release
- Proposed Use or Uses
- Proposed Daily Limit for Withdrawal or Release
- Proposed Term in Years & Justification
- Proposed Method of Measurement
- Summary of alternative water supply sources that were considered
- Justification of why Reservoir is most economic or feasible supply source
- A Conservation Plan
- A Contingency Plan describing the alternatives the person will use if water from the reservoir is restricted due to drought alerts (described in 312 IAC 6.3-5-2)

The Natural Resources Commission will determine to approve, condition, or deny a request for a water withdrawal contract; subject to approval by the Attorney General, Governor, and the Applicant.

Deliberation shall include consideration of:

- The standards provided in IC 14-25-2 and 312 IAC 6.3
- The report of the Advisory Council submitted under section 4(e) of 312 IAC 6.3
- Statements and documents the Commission elects to receive before or during the meeting.

Factors the Natural Resources Commission may consider in reviewing and acting upon the request for provision of minimum quantities of stream flow or for the sale of water on a unit pricing basis are:

- Terms, conditions, and purposes of authorizing legislation
- The likelihood of adverse effects to public safety, the environment, navigation, or recreation.
- Availability of another source of water to the person making the request.
- Proximity of the reservoir to any person that would receive water from the person making the request.
- Water allocation priorities for the use of the water.

Water Allocation Priorities

- First Priority: Domestic Purposes described in IC 14-25-1-3
- Second Priority: Health & Safety
- Third Priority: Power Production that meets contingency planning requirements
- Fourth Priority: Industry & Agriculture
- Fifth Priority: Purpose for Third or Fourth priority that does not meet contingency planning requirements
- Sixth Priority: Any Other purpose

Patoka Lake Regional Water & Sewer

District Contract Request

Patoka Lake Regional has held a contract with the State of Indiana for water supply since 1977, which was renewed in 1993 with a term of fifty (50) years.

All Current Terms of the Contract will remain the same.

The addition of 15 years brings the total contract term back up to 50 years to cover federal financing requirements to extend service of rural water supply in Orange County.

➤ Proposed Use:

Public Water Supply

➤ Proposed Limits (unchanged):

Annual Average Daily Withdrawal of Twenty (20) Million Gallons (20 MGD)

➤ Proposed Term: Fifteen (15) additional years for a total term of Fifty (50) years.

Eagle Pointe Contract Request

Eagle Pointe (original w. Pointe Assoc. dated 1976) has held a contract with the State of Indiana for water supply since 1991, which was renewed in 1996; expired April 2006.

This request represents what would be Eagle Pointe's third water supply contract with the State.

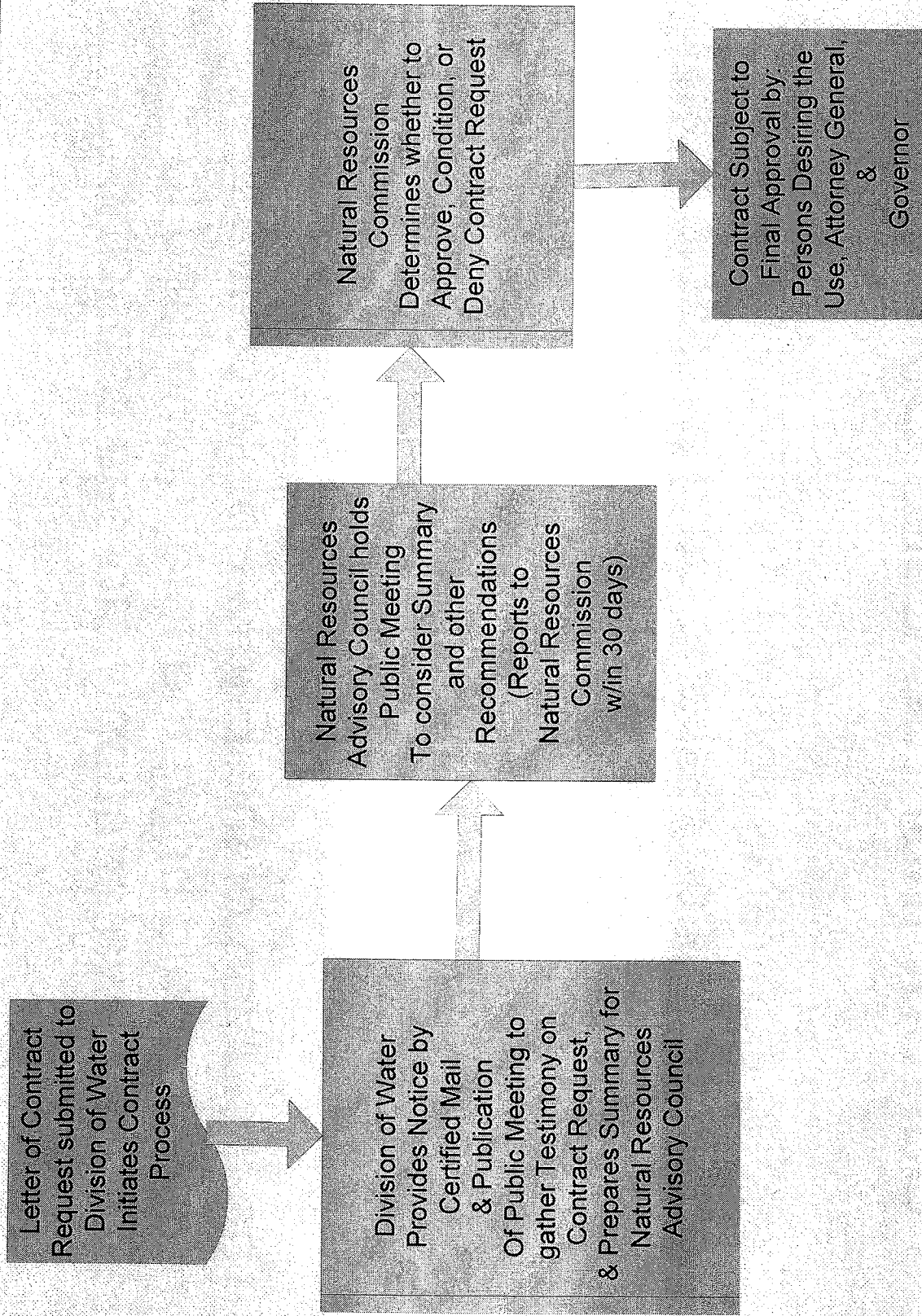
- Proposed Use:
Irrigation of grounds and golf course, filling of waterfall feature
- Proposed Limits:
Total Annual Limit of 85 Million Gallons per Year; an average Daily Limit of 233 thousand gallons per day
- Proposed Term: 10 Years

Current Monroe Lake Contracts

- Existing contracts commit 16.85% of the safe yield (122 Million Gallons Day) available from Monroe Lake to potential withdrawal.
- Active contracts commit 16.8% of the water supply storage capacity to potential withdrawal.
- The inclusion of the Eagle Pointe contract request would bring the total committed to 17.02% of water supply storage capacity.

Division of Water--Water Supply Contract Process: IC14-25-2 & 312 IAC 6.3

December 5, 2008





Information Maintained by the Office of Code Revision Indiana Legislative Services Agency
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IC 14-25-2

Chapter 2. Minimum Stream Flow and Water Sale Contracts

IC 14-25-2-1

Provision of minimum stream flow; sale of water

Sec. 1. (a) Except as provided in section 8 of this chapter, the commission may provide certain minimum quantities of stream flow or sell water on a unit pricing basis for water supply purposes from the water supply storage in reservoir impoundments or parts of the impoundments that are financed by the state. The water may be made available for direct withdrawal from the reservoir impoundment or released from the reservoir impoundment to create increased flowage beyond normal stream flow for use by the contracting party or purchaser at a downstream point. The withdrawals or releases may not exceed the storage allocated to water supply purposes in the authorizing legislation for water supply or multiple purpose reservoir projects.

(b) This section does not abrogate, limit, or affect in any manner prior or future sales of water from reservoirs constructed for or by the department in which adequate water for incidental water supply purposes is available.

As added by P.L.1-1995, SEC.18.

IC 14-25-2-2

Contracts on unit pricing basis

Sec. 2. (a) Except as provided in section 8 of this chapter and subject to section 2.5 of this chapter, the commission may contract with a person for the provision of certain minimum quantities of stream flow or for the sale of water on a unit pricing basis. A contract for the provision of minimum stream flows or for the sale of water on a unit pricing basis:

(1) must be executed by the commission; and

(2) is subject to approval by the following:

(A) The attorney general.

(B) The governor.

(C) The person desiring the use.

(b) A contract entered into under this chapter may not cover a period of more than fifty (50) years.

(c) Before the submission of the contract to the governor for approval, the commission shall submit a copy of the contract to the department. The department shall, within twenty (20) days of receipt, do the following:

(1) Prepare a memorandum relative to the effect that the contract might have on recreational facilities.

(2) Submit the memorandum to the governor for the governor's consideration.

As added by P.L.1-1995, SEC.18. Amended by P.L.231-2007, SEC.1.

IC 14-25-2-2.5

Request for water from reservoir; notice of request and public

meeting; affected water utilities

Sec. 2.5. (a) As used in this chapter, "water utility" means:

- (1) a public utility (as defined in IC 8-1-2-1(a));
- (2) a municipally owned utility (as defined in IC 8-1-2-1(h));
- (3) a not-for-profit utility (as defined in IC 8-1-2-125(a));
- (4) a cooperatively owned corporation;
- (5) a conservancy district established under IC 14-33; or
- (6) a regional water district established under IC 13-26;

that provides water service to the public.

(b) A person that seeks to contract with the commission for the provision of certain minimum quantities of stream flow or the sale of water on a unit pricing basis under section 2 of this chapter must submit a request to the commission and the department. The commission shall not make a determination as to whether to enter into a contract with the person making the request until:

- (1) the procedures set forth in this section have been followed; and
- (2) the commission has reviewed and considered each report submitted to the commission under subsection (i).

(c) Not later than thirty (30) days after receiving a request under subsection (b), the department shall provide, by certified mail, written notice of the request to the following:

- (1) Each person with whom the commission holds a contract for:
 - (A) the provision of certain minimum quantities of stream flow; or
 - (B) the sale of water on a unit pricing basis;

as of the date of the request.

- (2) The executive and legislative body of each:

- (A) county;
- (B) municipality, if any; and
- (C) conservancy district established under IC 14-33, if any;

in which the water sought in the request would be used.

- (3) The executive and legislative body of each:

- (A) county;
- (B) municipality, if any; and
- (C) conservancy district established under IC 14-33, if any;

in which the affected reservoir is located.

(d) Not later than seven (7) days after receiving a notice from the department under subsection (c), each person described in subsection (c)(1) shall, by certified mail, provide written notice of the request to each:

- (1) water utility; or
- (2) other person;

that contracts with the person described in subsection (c)(1) for the purchase of water for resale. Each person to whom notice is mailed under this subsection is in turn responsible for providing written notice by certified mail to each water utility or other person that purchases water from that person for resale. A water utility or another person required to provide notice under this subsection shall

mail the required notice not later than seven (7) days after it receives notice of the request from the water utility or other person from whom it purchases water for resale.

(e) At the same time that:

- (1) a person described in subsection (c)(1); or
- (2) a water utility or another person described in subsection (d);

mails any notice required under subsection (d), it shall also mail to the department, by certified mail, a

list of the names and addresses of each water utility or other person to whom it has mailed the notice under subsection (d).

(f) In addition to the mailed notice required under subsection (c), the department shall publish notice of the request, in accordance with IC 5-3-1, in each county:

- (1) in which a person described in section (c)(1) is located;
- (2) in which the affected reservoir is located;
- (3) in which the water sought in the request would be used; and
- (4) in which a water utility or other person included in a list received by the department under subsection (e) is located.

Notwithstanding IC 5-3-1-6, in each county in which publication is required under this subsection, notice shall be published in at least one (1) general circulation newspaper in the county. The department may, in its discretion, publish public notices in a qualified publication (as defined in IC 5-3-1-0.7) or additional newspapers to provide supplementary notification to the public. The cost of publishing supplementary notification is a proper expenditure of the department.

(g) A notice required to be mailed or published under this section must:

- (1) identify the person making the request;
- (2) include a brief description of:
 - (A) the nature of the pending request; and
 - (B) the process by which the commission will determine whether to enter into a contract with the

person making the request;

- (3) set forth the date, time, and location of the public meeting required under subsection (h); and

(4) in the case of a notice that is required to be mailed under subsection (c)(1) or (d), a statement of the recipient's duty to in turn provide notice to any:

- (A) water utility; or
- (B) other person;

that purchases water for resale from the recipient, in accordance with subsection (d).

(h) The advisory council established by IC 14-9-6-1 shall hold a public meeting in each county in which notice is published under subsection (f). A public meeting required under this subsection must include the following:

- (1) A presentation by the department describing:
 - (A) the nature of the pending request; and
 - (B) the process by which the commission will determine

whether to enter into a contract with the person making the request.

- (2) An opportunity for public comment on the pending request.

The advisory council may appoint a hearing officer to assist with a public meeting held under this subsection.

(i) Not later than thirty (30) days after a public meeting is held under subsection (h), the advisory council shall submit to the commission a report summarizing the public meeting.

As added by P.L.231-2007, SEC.2. Amended by P.L.3-2008, SEC.102.

IC 14-25-2-3

Rate of compensation

Sec. 3. A contract for the sale of water on a unit pricing basis that is entered into under this chapter or under IC 13-2-1-7 (before its repeal) after June 30, 1991, must provide for compensation to the state at the rate of thirty-three dollars (\$33) per one million (1,000,000) gallons of water.

As added by P.L.1-1995, SEC.18.

IC 14-25-2-4**Water resources development fund**

Sec. 4. (a) As used in this section, "fund" refers to the water resources development fund created by this section.

(b) The water resources development fund is created. Money paid to the state under a contract entered into under this chapter shall be deposited in the fund.

(c) The proceeds of the fund do not revert to the state general fund but constitute a revolving fund to be used exclusively for the purposes of this chapter.

(d) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest that accrues from the investments shall be deposited in the fund.

(e) Money in the fund may be used for any of the following purposes:

(1) The development of new reservoirs.

(2) The investigation, development, and improvement of existing reservoirs.

(3) The acquisition of easements or purchase in fee simple of land and property to be used as reservoir sites.

(4) The financing, construction, operation, and maintenance of reservoir impoundments or parts of impoundments for water supply storage and uses, either independently or in cooperation with any person.

(5) The investigation of water resource availability, quality, and water supply needs.

(6) Watershed protection.

(7) River enhancement.

(8) The preparation of a compilation and mapping of all

community public water supplies under IC 14-25-7-13(d).

(9) The operation of the division of water.

(f) The department shall administer the fund.

As added by P.L.1-1995, SEC.18. Amended by P.L.184-1995, SEC.1; P.L.186-2003, SEC.68.

IC 14-25-2-5**Adoption of rules**

Sec. 5. The commission shall adopt rules under IC 4-22-2 that are considered necessary for the proper administration of the following:

(1) The water resources development fund.

(2) This chapter.

As added by P.L.1-1995, SEC.18.

IC 14-25-2-6**Employment of personnel**

Sec. 6. The commission may, subject to the approval of the budget agency, employ personnel necessary for the efficient administration of this chapter.

As added by P.L.1-1995, SEC.18.

IC 14-25-2-7**Contracts entered into before July 1, 1991, binding**

Sec. 7. Except as provided in section 8 of this chapter, a contract for the sale of water on a unit pricing basis that was entered into under this chapter before July 1, 1991, is binding upon the commission. However, notwithstanding the terms of the contract, the rate of compensation for water

sold under the contract on a unit pricing basis is thirty-three dollars (\$33) per one million (1,000,000) gallons of water.

As added by P.L.1-1995, SEC.18.

IC 14-25-2-8

Primary source of water; compensation not required

Sec. 8. The state may not require compensation for water that:

- (1) comes from a reservoir impoundment financed by the state; and
- (2) is provided to water users in an area in which the outlet of the reservoir impoundment has been the primary source of water for domestic, industrial, and public use for at least fifty (50) years.

As added by P.L.1-1995, SEC.18.

IC 14-25-2-9

Primary source of water; contracts entered into before July 1, 1991, binding

Sec. 9. A contract that:

- (1) was entered into under IC 13-2-1-7 (before its repeal) before July 1, 1991; and
- (2) provides for the sale of water on a unit pricing basis in an

area described in section 8 of this chapter;

is binding upon the commission. However, the opposite party to the contract is not required to pay compensation to the state for water provided in the area.

As added by P.L.1-1995, SEC.18.

IC 14-25-2-10

Primary source of water; contracts on measured basis

Sec. 10. The commission may enter into contracts under this chapter to provide certain minimum quantities of stream flow or to provide water on a measured basis in an area described in section 8 of this chapter. However, the opposite party to the contract is not required to pay compensation to the state for water provided in the area described in section 8 of this chapter.

As added by P.L.1-1995, SEC.18.

IC 14-25-2-11

Compensation owed by conservancy districts

Sec. 11. (a) As used in this section, "conservancy district" refers to a conservancy district established under IC 14-33 or under IC 13-3-3 (before its repeal) for the purpose of furnishing water supply for domestic, industrial, and public use.

(b) The state may not obtain compensation from a conservancy district under a contract for the sale of water on a unit pricing basis upon the basis of an estimate of the quantity of water provided to the conservancy district.

(c) The calculation of the compensation owed by a conservancy district under a contract must be based upon either of the following:

- (1) The measurement of the quantity of water provided to the conservancy district.
- (2) The measurement of the water furnished by the conservancy district to the persons who obtain water from the conservancy district, with a reasonable allowance made for water lost by the conservancy district in the process of obtaining, treating, and furnishing the water.

(d) This section does not affect the obligation of a conservancy district to pay a minimum yearly fee in a certain amount established by a contract.

As added by P.L.1-1995, SEC.18.

ARTICLE 6.3. WATER WITHDRAWAL CONTRACTS FROM STATE RESERVOIRS

Rule 1. Applicability

312 IAC 6.3-1-1 Purpose and scope

Authority: IC 14-10-2-4; IC 14-25-2-5

Affected: IC 14-25-2

Sec. 1. (a) This article assists with the application of P.L.231-2007 to IC 14-25-2.

(b) The article applies to contracts for the withdrawal or release of water supply storage from a reservoir, including provisions for the following:

(1) The review of contract proposals.

(2) The administration of contracts.

(3) The expiration or other termination of contracts.

(c) A person must not withdraw or obtain the release of water from a reservoir except as provided in:

(1) the terms of a contract; or

(2) an exemption from a contract requirement under IC 14-25-2 and this article.

(Natural Resources Commission; 312 IAC 6.3-1-1; filed Nov 5, 2008, 2:32 p.m.: 20081203-IR-312080131FRA)

312 IAC 6.3-1-2 Applicability to contracts for water withdrawals

Authority: IC 14-10-2-4; IC 14-25-2-5

Affected: IC 14-25-2

Sec. 2. (a) This article governs the procedures for, and the substance of, consideration of any contract proposal made to the state and submitted to the division after February 28, 2009, for the withdrawal or release of water from the water supply storage of a reservoir.

(b) A contract for the withdrawal or release of water supply storage from a reservoir, which was entered by the state before March 1, 2009, is governed by the terms of the contract and by any statute or rule in effect when the contract was entered.

(c) Upon the expiration or termination of a contract governed by subsection (a) or (b), any water withdrawal or taking of a release must cease unless a new contract is approved under IC 14-25-2 and this article. *(Natural Resources Commission; 312 IAC 6.3-1-2; filed Nov 5, 2008, 2:32 p.m.: 20081203-IR-312080131FRA)*

312 IAC 6.3-1-3 Administration by the department's division of water

Authority: IC 14-10-2-4; IC 14-25-1-11

Affected: IC 14-10-2-3; IC 14-25-2

Sec. 3. (a) The division shall:

(1) serve as the point of contact; and

(2) coordinate the administrative, professional, and technical functions of this article.

(b) Subject to IC 14-10-2-3, the division director shall issue any order appropriate to implementation of this article. *(Natural Resources Commission; 312 IAC 6.3-1-3; filed Nov 5, 2008, 2:32 p.m.: 20081203-IR-312080131FRA)*

Rule 2. Definitions

312 IAC 6.3-2-1 Definitions applicable to water withdrawal contracts

Authority: IC 14-10-2-4; IC 14-25-2-5

Affected: IC 14-8; IC 14-25-2

Sec. 1. This rule provides definitions that:

(1) apply to this article; and

(2) are in addition to those set forth in:

(A) IC 14-8;

(B) IC 14-25-2; and

WATER WITHDRAWAL CONTRACTS FROM STATE RESERVOIRS

(C) 312 IAC 1.

(Natural Resources Commission; 312 IAC 6.3-2-1; filed Nov 5, 2008, 2:32 p.m.: 20081203-IR-312080131FRA)

312 IAC 6.3-2-2 "Authorizing legislation" defined

Authority: IC 14-10-2-4; IC 14-25-2-5

Affected: IC 14-25-2; IC 14-26-4-12

Sec. 2. "Authorizing legislation" means the federal or state legislation that provides legal authority for the construction or maintenance of a reservoir. Examples are as follows:

(1) 43 U.S.C. 390b to 43 U.S.C. 390f.

(2) IC 14-26-4-12.

(3) With respect to a contract for water withdrawal or a release of water described in 312 IAC 6.3-1-2, any federal or state legislation cited in the contract.

(Natural Resources Commission; 312 IAC 6.3-2-2; filed Nov 5, 2008, 2:32 p.m.: 20081203-IR-312080131FRA)

312 IAC 6.3-2-3 "Corps of engineers" defined

Authority: IC 14-10-2-4; IC 14-25-2-5

Affected: IC 14-25-2

Sec. 3. "Corps of engineers" refers to the U.S. Army Corps of Engineers. *(Natural Resources Commission; 312 IAC 6.3-2-3; filed Nov 5, 2008, 2:32 p.m.: 20081203-IR-312080131FRA)*

312 IAC 6.3-2-4 "Division" defined

Authority: IC 14-10-2-4; IC 14-25-2-5

Affected: IC 14-25-2

Sec. 4. "Division" refers to the division of water of the department unless another division of the department is specified. *(Natural Resources Commission; 312 IAC 6.3-2-4; filed Nov 5, 2008, 2:32 p.m.: 20081203-IR-312080131FRA)*

312 IAC 6.3-2-5 "Minimum quantities of stream flow" defined and determined

Authority: IC 14-10-2-4; IC 14-25-2-5

Affected: IC 4-21.5-3-5; IC 14-25-2; IC 14-25-7-14

Sec. 5. (a) Except as provided in this section, "minimum quantities of stream flow" refers to an order, which implements the standards of IC 14-25-7-14, determined at a point of discharge of a reservoir's outlet works.

(b) With respect to the following reservoirs, "minimum quantities of stream flow" refers to the following:

(1) For Brookville Lake, forty (40) cubic feet per second above elevation seven hundred thirteen (713) feet, National Geodetic Vertical Datum of 1929 (NGVD-29).

(2) For Hardy Lake, five-tenths (0.5) cubic feet per second.

(3) For Monroe Lake, fifty (50) cubic feet per second whenever the reservoir pool is above elevation five hundred fifteen (515) feet, National Geodetic Vertical Datum of 1929 (NGVD-29). When lower than this elevation, the minimum quantities of stream flow are as determined by the corps of engineers.

(4) For Patoka Lake, five (5) cubic feet per second whenever the reservoir pool is above elevation five hundred six (506) feet, National Geodetic Vertical Datum of 1929 (NGVD-29). When lower than this elevation, the minimum quantities of stream flow are as determined by the corps of engineers.

(c) A person may petition the division director to determine an impoundment, not listed in subsection (b), is a reservoir subject to this article. If the petition is granted, the division director shall also determine the minimum quantities of stream flow for the reservoir. A determination under this subsection is a determination of status under IC 4-21.5-3-5. *(Natural Resources Commission; 312 IAC 6.3-2-5; filed Nov 5, 2008, 2:32 p.m.: 20081203-IR-312080131FRA)*

312 IAC 6.3-2-6 "Reservoir" defined

Authority: IC 14-10-2-4; IC 14-25-2-5

Affected: IC 14-25-2

Sec. 6. "Reservoir" means an impoundment that:

- (1) contains water supply storage; and
- (2) was financed, or parts of which were financed, by the state.

(Natural Resources Commission; 312 IAC 6.3-2-6; filed Nov 5, 2008, 2:32 p.m.: 20081203-IR-312080131FRA)

312 IAC 6.3-2-7 "Withdrawal or release of water" defined

Authority: IC 14-10-2-4; IC 14-25-2-5

Affected: IC 14-25-2

Sec. 7. "Withdrawal or release of water" means the:

- (1) physical removal of water from or beneath a reservoir; or
- (2) outflow of water from a reservoir to maintain stream flow.

(Natural Resources Commission; 312 IAC 6.3-2-7; filed Nov 5, 2008, 2:32 p.m.: 20081203-IR-312080131FRA)

Rule 3. Procedures

312 IAC 6.3-3-1 Request for water withdrawal or release from a reservoir

Authority: IC 14-10-2-4; IC 14-25-2-5

Affected: IC 14-25-2-2

Sec. 1. (a) A person that seeks to contract with the commission for the:

- (1) provision of certain minimum quantities of stream flow; or
- (2) sale of water on a unit pricing basis;

under IC 14-25-2-2, must submit a written request to the division under this article.

(b) A written request under subsection (a) must be completed and must include the following information:

(1) The name, address, e-mail address, and telephone number of the following:

(A) The person that would enter the contract.

(B) At least one (1) individual to serve as a point of contact for the person that would enter the contract.

(2) If another person is acting for the person described in subdivision (1), the same information for the other person as is described in subdivision (1).

(3) The location where any withdrawal or release from a reservoir would occur.

(4) The proposed use or uses of the withdrawal or release.

(5) The location of the proposed use or uses described in subdivision (4).

(6) The proposed daily limit for the withdrawal or release of water (or pump capacity, if the limit is proposed to be based upon a pump capacity).

(7) The proposed term, in years, of the contract and a justification for the proposed term.

(8) The proposed method for measuring the withdrawal or release of water.

(9) A summary of alternative water supply sources that were considered.

(10) A justification for why the reservoir is the most economic or feasible supply source.

(11) A conservation plan.

(c) A written request under subsection (a) is not complete until the person submits, as part of the application:

(1) a contingency plan that describes the alternatives the person will use if the withdrawal or release of water from the reservoir is restricted due to a drought alert described in 312 IAC 6.3-5-2; or

(2) a statement that the person agrees to withstand the results of not being able to receive water from the reservoir.

(d) A contract shall not be executed unless the:

(1) contingency plan is feasible; or

(2) person seeking the contract agrees to withstand the results of not being able to receive water from the reservoir.

WATER WITHDRAWAL CONTRACTS FROM STATE RESERVOIRS

(Natural Resources Commission; 312 IAC 6.3-3-1; filed Nov 5, 2008, 2:32 p.m.: 20081203-IR-312080131FRA)

312 IAC 6.3-3-2 Notice by division of water to interested persons

Authority: IC 14-10-2-4; IC 14-25-2-5

Affected: IC 14-25-2-2.5

Sec. 2. The division shall provide notice as follows:

(1) Not later than thirty (30) days after receiving a complete request under section 1 of this rule, provide notice by certified mail to the persons described in IC 14-25-2-2.5(c).

(2) As soon as practicable, cause notice by publication in each county described in IC 14-25-2-2.5(f).

(Natural Resources Commission; 312 IAC 6.3-3-2; filed Nov 5, 2008, 2:32 p.m.: 20081203-IR-312080131FRA)

312 IAC 6.3-3-3 Public meetings

Authority: IC 14-10-2-4; IC 14-25-2-5

Affected: IC 4-21.5; IC 14-25-2-2.5

Sec. 3. (a) The division director shall appoint a department employee to serve as hearing officer for any public meeting under IC 14-25-2-2.5(h).

(b) The public meeting shall include the following:

(1) A presentation by the department describing the following:

(A) The nature of the pending request.

(B) The process by which the commission will determine whether to enter into a contract with the person making the request. The process shall reference IC 14-25-2 and this article.

(2) An opportunity for public comment on the pending request.

(c) A hearing officer shall conduct the public meeting in a manner that is best suited to the solicitation of public comments in support of fact-finding. Neither the rules of evidence nor IC 4-21.5 apply.

(d) A hearing officer shall maintain a record of the public meeting to assist in providing written recommendations to the advisory council. Any other person may also cause a recording to be made of the public meeting, but the official record is maintained by the hearing officer. *(Natural Resources Commission; 312 IAC 6.3-3-3; filed Nov 5, 2008, 2:32 p.m.: 20081203-IR-312080131FRA)*

312 IAC 6.3-3-4 Advisory council report summary and recommendations

Authority: IC 14-10-2-4; IC 14-25-2-5

Affected: IC 5-14-1.5; IC 14-25-2-2

Sec. 4. (a) As soon as practicable following the public meeting, the hearing officer shall deliver a written summary of the meeting and any recommendations to the advisory council.

(b) The written summary required under subsection (a) shall, in anticipation of the memorandum required under IC 14-25-2-2(c), also consider the effect that exercise of the contract may have on recreational facilities.

(c) The advisory council shall consider the hearing officer's written summary and recommendations during a public meeting held under IC 5-14-1.5.

(d) The advisory council is not limited to the written summary and recommendations of the hearing officer, but may also consider the following:

(1) Recommendations of the division of state parks and reservoirs or another division of the department that manages the reservoir from which the water would be withdrawn or released.

(2) Recommendations from a federal, state, or local agency with expertise regarding water usage and supply.

(3) Information received before or during an advisory council meeting.

(e) Not later than thirty (30) days after the final public meeting under section 3 of this rule, the advisory council shall submit to the commission a report summarizing the public meeting or meetings. The report may be accompanied by recommendations that duplicate, augment, or contrast with those of the hearing officer. *(Natural Resources Commission; 312 IAC 6.3-3-4; filed Nov 5, 2008, 2:32 p.m.: 20081203-IR-312080131FRA)*

312 IAC 6.3-3-5 Commission action on contract and subsequent approvals

Authority: IC 14-10-2-4; IC 14-25-2-5

Affected: IC 4-21.5-2-5; IC 5-14-1.5; IC 14-25-2-2

Sec. 5. (a) During a public meeting under IC 5-14-1.5, the commission may deliberate as to whether to approve a person's written request for the:

- (1) provision of certain minimum quantities of stream flow; or
- (2) sale of water on a unit pricing basis.
- (b) The commission shall include in its deliberations a consideration of the following:
 - (1) The standards provided by IC 14-25-2 and this article.
 - (2) The report of the advisory council submitted under section 4(e) of this rule.
 - (3) Other statements or documents the commission elects to receive before or during the meeting.
- (c) Consistent with subsection (b), the commission:
 - (1) shall determine to approve, condition, or deny a person's request; and
 - (2) may elect to execute a contract under IC 14-25-2-2(a)(1).

If the commission elects to execute a contract, the contract shall be delivered to the division. A determination under this subsection is governed by IC 4-21.5-2-5(11).

(d) Within twenty (20) days after receiving a contract delivered under subsection (c), the division shall submit the memorandum required under IC 14-25-2-2(c)(2) to the governor for the governor's consideration.

(e) A contract executed by the commission under subsection (c) is subject to approval by each of the following:

- (1) The attorney general.
- (2) The governor.
- (3) The person desiring the use.

(Natural Resources Commission; 312 IAC 6.3-3-5; filed Nov 5, 2008, 2:32 p.m.: 20081203-IR-312080131FRA)

Rule 4. Contract Terms and Conditions

312 IAC 6.3-4-1 Water allocation factors

Authority: IC 14-10-2-4; IC 14-25-2-5

Affected: IC 14-25-1-3; IC 14-25-2

Sec. 1. This section establishes the following factors that the commission shall consider in reviewing, and for acting upon, a person's written request for the provision of certain minimum quantities of stream flow or for the sale of water on a unit pricing basis:

- (1) The terms, conditions, and purposes of the authorizing legislation.
- (2) The likelihood of adverse effects to:
 - (A) public safety;
 - (B) the environment;
 - (C) navigation; or
 - (D) recreation.
- (3) The availability of another source of water to the person making the request.
- (4) The proximity to the reservoir of any person that would receive water from the person making the request.
- (5) Water allocation priorities for use of the water as follows:
 - (A) First priority is for the use of water for domestic purposes as described in IC 14-25-1-3.
 - (B) Second priority is for the use of health and safety.
 - (C) Third priority is for power production that meets the contingency planning provisions of the drought alerts described in 312 IAC 6.3-5-2.
 - (D) Fourth priority is for industry and agriculture (not described in clause (A), (B), or (C)) that meets the contingency planning provisions of the drought alerts described in 312 IAC 6.3-5-2.
 - (E) Fifth priority is for a purpose described in clause (C) or (D) that does not meet the contingency planning provisions of the drought alerts described in 312 IAC 6.3-5-2.
 - (F) Sixth priority is for any other purpose.

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(6) If the person making the request provides water to others (and the others provide for uses that include multiple priorities under subdivision (5)), the extent to which the person demonstrates an ability to implement the priorities for water allocation that are set by subdivision (5).

(Natural Resources Commission; 312 IAC 6.3-4-1; filed Nov 5, 2008, 2:32 p.m.: 20081203-IR-312080131FRA)

312 IAC 6.3-4-2 Duration of a contract

Authority: IC 14-10-2-4; IC 14-25-2-5

Affected: IC 14-25-2; IC 14-25-7-11

Sec. 2. (a) The commission shall not approve a contract that covers a period that is longer than authorized by a plan for water resource management approved under IC 14-25-7-11.

(b) In determining the duration of a contract, the commission may consider the water allocation factors in section 1 of this rule.

(c) Notwithstanding subsections (a) and (b), a contract entered under IC 14-25-2 and this article shall not cover a period of more than fifty (50) years. *(Natural Resources Commission; 312 IAC 6.3-4-2; filed Nov 5, 2008, 2:32 p.m.: 20081203-IR-312080131FRA)*

Rule 5. Drought Alerts and Emergency Measures

312 IAC 6.3-5-1 Application of rule for drought alerts and emergencies

Authority: IC 14-10-2-4; IC 14-25-2-5

Affected: IC 14-25-2

Sec. 1. Unless exempted by 312 IAC 6.3-1-2(b), this rule governs any contract for a water withdrawal or release from a reservoir that occurs during a drought alert or another emergency. *(Natural Resources Commission; 312 IAC 6.3-5-1; filed Nov 5, 2008, 2:32 p.m.: 20081203-IR-312080131FRA)*

312 IAC 6.3-5-2 Drought alerts

Authority: IC 14-10-2-4; IC 14-25-2-5

Affected: IC 14-25-2

Sec. 2. (a) The director of the department may declare a drought alert for a designated reservoir based upon a drought emergency plan approved by the commission. A drought alert shall apply the Standardized Precipitation Index, U.S. Drought Monitor and below normal percentile of regionalized monthly average stream flow.

(b) From least severe to most severe, a drought alert shall be declared as a:

- (1) drought watch;
- (2) drought warning; or
- (3) drought emergency.

(c) Contingency plans shall be specified for a drought alert in any of the following:

- (1) A drought emergency plan approved by the commission.
- (2) The terms of a particular drought alert.
- (3) A contract for the withdrawal of water or the release of water from a reservoir.

(d) The stages of drought alerts and their associated criteria are as follows:

- (1) A declaration of drought watch is appropriate when at least two (2) of the following occur:

- (A) The Standardize Precipitation Index is -1.00 to -1.49.
- (B) The stream flow as a percentile of normal is ten (10) to twenty-four (24).
- (C) The U.S. Drought Monitor value is D1 or more severe.

- (2) A declaration of drought warning is appropriate when at least two (2) of the following occur:

- (A) The Standardized Precipitation Index is -1.50 to -1.99.
- (B) The stream flow as a percentile of normal is six (6) to nine (9).
- (C) The U.S. Drought Monitor value is D2 or more severe.

- (3) A declaration of drought emergency is appropriate when at least two (2) of the following occur:

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- (A) The Standardized Precipitation Index is -2.00 or less.
- (B) The stream flow as a percentile of normal is five (5) or less.
- (C) The U.S. Drought Monitor value is from D3 to D4.

(Natural Resources Commission; 312 IAC 6.3-5-2; filed Nov 5, 2008, 2:32 p.m.: 20081203-IR-312080131FRA)

312 IAC 6.3-5-3 Emergency measures to protect life or property

Authority: IC 14-10-2-4; IC 14-25-2-5

Affected: IC 14-25-2

Sec. 3. (a) The department and the corps of engineers may take the emergency measures they individually or jointly determine necessary in the operation of a reservoir, including lowering the elevation of the water below an elevation at which water may be withdrawn or released under a contract, to protect life or property.

(b) Notwithstanding subsection (a), the department and the corps of engineers may enter any agreement between them as to which governmental entity shall exercise the authority described in subsection (a).

(c) A contract entered under this article for the withdrawal or release of water from a reservoir is subordinate to an exercise of authority under this section.

(d) No third person has a right of action against the department or the corps of engineers based upon an exercise of authority under this section. *(Natural Resources Commission; 312 IAC 6.3-5-3; filed Nov 5, 2008, 2:32 p.m.: 20081203-IR-312080131FRA)*

Rule 6. Enforcement

312 IAC 6.3-6-1 Enforcement

Authority: IC 14-10-2-4; IC 14-25-2-5

Affected: IC 14-25-2

Sec. 1. (a) The secretary of the commission may suspend or revoke any contract for the withdrawal or release of water where the person obtaining the contract:

- (1) Breaches the contract.
- (2) Violates IC 14-25-2 or this article.
- (3) For any improvement constructed or caused by the person to be constructed with respect to the withdrawal or release of water or for the subsequent distribution of the water, fails to exercise due diligence to require another person using the improvement to conduct activities consistently with:
 - (A) the contract;
 - (B) IC 14-25-2; and
 - (C) this article.

(b) The remedy described in subsection (a) is in addition to any other remedy provided by law. *(Natural Resources Commission; 312 IAC 6.3-6-1; filed Nov 5, 2008, 2:32 p.m.: 20081203-IR-312080131FRA)*

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